

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>3:96-cr-00001-HDM</b>
	)	
<b>vs.</b>	)	
	)	<b>MINUTES OF COURT</b>
<b>JOSEPH MARTIN BAILIE,</b>	)	
	)	
<b>Defendant.</b>	)	<b>January 24, 2018</b>
	/	

---

**PROCEEDINGS: TELEPHONIC HEARING RE: DEFENDANT’S (ECF No. 185)  
MOTION FOR LEAVE TO CONDUCT DISCOVERY**

**PRESENT:**  
**THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE**

**Deputy Clerk: Paris Rich Recorder: Wayne Julian**

**Counsel for Plaintiff: Adam Flake, AUSA**

**Counsel for Defendant: Amy Cleary, AFPD and Wendi Overmyer, AFPD**

At 10:23 a.m., the Court convenes.

Counsel are present telephonically. The Defendant (In USBOP custody) is not present. The Court addresses the Defendant's [ECF No. 185] Motion for Leave to Conduct Discovery and frames the central issue relating to the collective review performed by the U.S. Department of Justice (USDOD) and Federal Bureau of Investigation (FBI) that determined the report regarding microscopic hair comparison analysis in this case contained erroneous statements.

The Court next addresses whether or not the admitted evidence at trial was improperly admitted because the report and/or testimony through the filed trial document was in error and contained erroneous statements and whether the outcome would have been different if it had not been used. The Court states the ineffective assistance of trial and appellate counsel flows from the stated central issue. The Court confirms the Defense is entitled to some discovery, however, the Court believes the request is substantially overbroad.

The Court inquires as to any information received by the Defense from prior counsel. On behalf of the Defendant, Ms. Cleary states they have reached out to the Defendant's trial and appellate counsel and counsel have represented they no longer have any of the Defendant's files. Ms. Cleary further states she has only been able to obtain the FBI lab report and the trial transcripts and pleadings.

**USA v. JOSEPH MARTIN BAILIE**  
**3:96-cr-00001-HDM**

**January 24, 2018**  
**Page 2 of 2**

---

The Court frames the parameters of the limited discovery and suggests limited discovery should commence in the form of properly framed, limited issue interrogatories by the Defendant to the Government. On behalf of the Government, Mr. Flake responds to the Court's limited discovery proposal and confirms he will make further inquiries. Ms. Cleary recites clarification and requests the limited discovery also include when the Government and/or the FBI became aware there were problems with the FBI testing of the hair analysis generally and their reliance on it. The Court confirms it will allow the additional limited request.

**IT IS ORDERED, the Defendant's [ECF No. 185] Motion for Leave to Conduct Discovery is GRANTED in part and DENIED in part.**

**IT IS FURTHER ORDERED, within 30 days of this date, the Defendant is granted leave to conduct limited discovery as it relates to the false microscopic hair comparison analysis. This includes the right of the Defendant to submit interrogatories and requests for production of documents to the Government related to all of the information the Government has in its possession with respect to the securing of the hair sample, submission of the hair sample, obtaining the analysis and report, and the submission of the report to the Court.**

**IT IS FURTHER ORDERED, the Defendant is further granted leave to conduct limited discovery as to when the Government and/or the FBI learned there was an error in the report, who learned about the erroneous report submitted, whether or not the individuals who learned about it conveyed the information to anyone else and, if so, to whom and when it was provided, and when the Government and/or the FBI became aware there were problems with the FBI testing of the hair analysis generally and their reliance on it.**

**IT IS FURTHER ORDERED, the Government shall have 60 days to respond to the Defendant's limited discovery interrogatories and requests for production of documents. Further, the Government shall have seven days following receipt of the Defendant's limited discovery requests to file any objection with the Court as to the contents.**

**IT IS FURTHER ORDERED, in the event the Government is able to locate the hair samples in this matter, the samples shall be preserved. IT IS SO ORDERED.**

At 10:36 a.m., the Court adjourns.

DEBRA K. KEMPI, CLERK

By: /s/ Paris Rich  
Deputy Clerk